rate for both parties so that GTECA would recover its total capital investment. *See* GTE Direct Case, Response to Factual Issue 2, at 11-13.

GTECA's contract with Apollo to temporarily perform GTECA's maintenance responsibilities was separate and distinct from the Lease Agreement. There is absolutely no correlation between the revenue GTECA received from the Lease Agreement and the revenue Apollo received from the Maintenance Agreement. No "offset" was used in calculating Apollo's prepayment to reflect maintenance. The prepayment amount was simply calculated as the remaining principle amount on the Lease Agreement at the time of the prepayment.

Allegation: Apollo complains that "(1) The tariff withdraws revenues from Apollo; (2) It relieves Apollo of repair and maintenance activities (and thus costs) for only that portion of the system covered by the tariff; Apollo is left to bear any costs associated with the head-end and subscriber premises portion of the system...." Apollo Br., at 5, n. 8 and 7, referencing tariff Section 18.3.1.)

Facts: Apollo's claim that it will incur costs with no recourse of recovery is based on the erroneous assumption that it will continue to be responsible for major maintenance and repair activities. However, the Maintenance Agreement has been supplanted in its entirety. With the exception of the down-link equipment (which is owned by Apollo), Apollo is no longer responsible for maintenance of GTECA's network. The tariff describes the obligations of GTECA with respect to the regulated portion of the service. Unregulated services and equipment (*e.g.*, decoders) will be maintained by GTECA outside of the tariff but in accordance with all applicable federal and state regulations. GTECA will maintain and repair, at no additional charge to Apollo, the existing inventory of decoders, the coaxial system from the interface point at the head-end (where Apollo's video and analog signals are received) to the subscriber's premise, and will repair insider wiring if requested by the subscriber. Apollo will no longer incur any costs associated with these functions.

It is inconceivable that Apollo's net revenues would decline because of the supersession of the Maintenance Agreement by the tariff. Apollo suffers no harm because its reduction in costs will more than offset its loss of revenue. Under the Maintenance Agreement, GTECA paid Apollo to perform maintenance functions for GTECA's entire network. However, Apollo was charged back half of the maintenance payment associated with its lease of half of the network. Thus, Apollo incurred out-of-pocket costs associated with maintenance activities that were not directly covered by GTECA's payment to Apollo. These remaining out-of-pocket expenses were, and continue to be, recovered through Apollo's basic charges for cable television service. While Apollo will continue to incur some minimal maintenance expense associated with the equipment it owns and answering repair and installation calls from its subscribers, Apollo will clearly avoid the bulk of its current yearly maintenance and installation expense.[9] The tariff does not apply any additional charges to Apollo for GTECA's maintenance of the network; therefore, as long as Apollo does not substantially reduce its basic cable rates, it will suffer no financial impact from the tariff.

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9 By its own admission, Apollo's annual maintenance and installation costs were $454,862 (see June 29, 1994 *ex parte* correspondence from Edward P. Taptich, Gardner, Carton, and Douglas, to Mr. A. Richard Metzger, Acting Chief, Common Carrier Bureau, at 14 and Attachment 1). GTECA's net payment to Apollo for reimbursement of maintenance and installation costs averaged approximately $240,000 per year, leaving over $200,000 of out-of-pocket expenses to be recovered through Apollo's cable service.

Allegation: Apollo alleges that GTECA's tariff abrogates to GTECA most system operations and maintenance, divides the system in half, and has caused billing and operational problems. Apollo Br., at 5, 6 & n. 9.

Facts: The network was never designed to be a unitary system nor has it been operated as a unitary system. While GTECA elected to contract with Apollo to perform certain activities such as installation and maintenance, it had no obligation under the Lease Agreement to do so and could have performed these functions itself or contracted with another firm other than Apollo. Apollo's allegations conveniently ignore the fact that many of the agreements were negotiated for varying terms and contain specific conditions which allow either party to terminate upon proper notice, irrespective of GTECA's tariff filings. Apollo can claim no harm by these actions since GTECA properly terminated these respective agreements pursuant to the terms and conditions it agreed to itself.

While not relevant to this investigation, Apollo infers that Service Corp.'s decision to terminate its billing contract (Service Agreement) with Apollo, coupled with the continued use of a single converter box for both programmers (Apollo and Service Corp.), has caused substantial disruptions. Apollo Br., at 5-6 & n. 9. As an initial matter, Service Corp. has the absolute right to bill for its own services or to contract with any other party to perform these services. Service Corp. terminated its billing arrangement with Apollo by giving proper notice as allowed under that agreement.

Apollo's tired contention with respect to the use of a single converter box (decoder) to serve two programmers (Apollo Br., at 6, n. 9) raises nothing new. Apollo and Service Corp. have shared the same decoder for approximately five years with minimal operational problems and this continues to be the case. The only new allegation is that Apollo now claims that its subscribers can no longer order pay-per-view (PPV) services by way of their remote controllers. Specifically, Apollo claims that because of Service Corp.'s decision to bill its subscribers directly, Apollo cannot capture billing information from its subscribers which make impulse PPV (IPPV) purchases. This allegation is simply untrue. In reality, Apollo's purported inability to bill its subscribers for PPV purchases is due solely to Apollo's failure to configure its billing system properly. It has nothing to do with Service Corp.'s separate billing system or the continued use of a single decoder.

In order to allow Apollo to control IPPV capabilities, including the ability to authorize a converter box to accept impulse purchases and the establishment of a credit limit within the converter box, GTECA reassigned the IPPV event number range. This change assured that Apollo's subscribers would continue to receive the same Apollo services which existed prior to July 18, 1994. Such an number change, which had occurred twice previously, is one that Apollo's billing system can easily accommodate if it is properly configured.

At the time Apollo filed its Brief on August 15, 1994, Apollo was aware of what was required in order to permit its billing system to accept the revised event number range such that it could capture decoder information on IPPV activities. Technical specifications had been previously provided by TV/COM, the decoder vendor, to Cable Data, Apollo's billing system contractor, setting forth the interface requirements between Cable Data's billing system and TV/COM's IPPV Data Base Processor. Cable Data, as Apollo's contractor, was required to properly configure its billing system to these specifications in order to capture Apollo's IPPV billing data. It did not do so.[10] Because -- and only because -- Apollo's contractor failed in this regard, Apollo is apparently experiencing some billing problems.[11]

The Tariff's Terms and Conditions Do Not Substantially Alter or Limit Apollo's Cerritos Operations.

In its brief, Apollo purports to offer a side-by-side comparison of various tariff provisions and as well as its interpretation of the pre-existing contracts. As with Apollo's other factually allegations, this comparison is laced with errors, misstatements and otherwise inaccurate and misleading information.

Section 18.3

Allegation: Apollo claims that the tariff restricts transmission to only analog video and audio signals, precluding any use of digital technology to expand channel capacity. Apollo Br., at 7.

Facts: The tariff simply describes the technical and functional characteristics of the network as it exists today and is simply silent as to the use of any other technologies. GTECA's Cerritos network is currently designed for analog signal inputs

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[10] In contrast, the vendor of Service Corp.'s new billing system, Infoview, used the same technical specifications dated April 28, 1993 as were provided to Apollo's contractor. In Service Corp.'s case, 100% of the event purchase transactions transmitted by TV/COM's IPPV Data Base Processor to the Infoview system have been successfully captured. This clearly shows that the technical specifications provided by TV/COM are accurate when properly implemented. If Apollo's contractor failed in this regard, the fault lies solely with Apollo.

[11] Apollo's failure to provide a billing system capable of capturing Service Corp.'s IPPV purchases also means that Service Corp. has sustained substantial damage by way of lost profits (perhaps in the hundreds of thousands of dollars) during the nearly five years Apollo served as Service Corp.'s billing agent. Once Service Corp. has ascertained its loss, an appropriate demand will be made upon Apollo -- and litigated, if necessary.

and for the transport of analog signals only. The Cerritos system has a total bandwidth of 550 MHz which in a standard engineered system equates to 78 NTSC analog 6 MHz channels. The use of digital techniques to expand channel capacity would require redesign of the system and a significant change-out and/or addition of equipment.

Under the previous contractual arrangement, GTECA would have to agree to any system re-design and both Apollo and GTECA would have to agree on a price that would allow GTECA to recover its investment.[12] Under the current tariff arrangement, a similar approach would be used should Apollo desire to utilize digital techniques to expand channel capacity. Apollo and GTECA could agree to system design and equipment changes, GTECA would develop and file a revised tariff with new rates and any required changes to terms and conditions. To the extent that GTECA finds it feasible and beneficial to expand channel capacity using digital technology, it will modify the tariff to describe such functionality and any associated charges which will enable it to recover any underlying costs.

Section 18.3

Allegation: Apollo claims that the tariff requires subscriber use of decoder equipment and precludes use of other types of "compatible" equipment. Apollo Br., at 7.

Facts: The tariff language allows any type of "compatible equipment" that may be used to de-encrypt signals at subscriber's premises and is not limited to the existing decoder equipment. Section 18.3 of the tariff states "To gain access to customer

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[12] The provisions of Apollo's Lease Agreement only allowed GTECA to recover its investment for the coaxial network as it was initially designed and constructed.

provided video programming carried on Video Channel Services, subscribers must use compatible equipment (*i.e.*, decoder/converter box) at the subscriber's premises. All de-encryption of encrypted signals must take place at the subscriber's premises."

This tariff language does not place any undue limitations or restrictions on Apollo. *First*, the system is designed so that all encryption takes places at the headend and de-encryption must take place within the decoder or converter box at the subscribers's premises. Apollo is very well aware of this design. Therefore, a subscriber must have some device at its premises (i.e. converter box or decoder) to de-encrypt any encrypted (or scrambled) channels such as pay-per-view or premium channels. GTECA would not require a decoder for any subscriber of Apollo who wanted to receive channels in the clear, assuming Apollo was also agreeable. *Second*, GTECA will allow the subscriber to provide their own decoder or converter box. The tariff language provides reasonable assurances that all decoders or converter box equipment at the subscriber's premises would be compatible with GTECA's system equipment and design. GTECA will assume this responsibility, not Apollo, if it provides the decoder equipment.

Section 18.3.3(D)

Allegation: Apollo complains that it will incur costs, without compensation, of receiving subscriber complaints of service interruption. Apollo Br., at 8.

Facts: As GTE previously demonstrated, the majority of Apollo's maintenance related expenses will not exist under the tariff arrangement. However, Apollo's rates for local cable service continue to reflect these original maintenance cost levels. Because Apollo is now able to avoid a substantial portion of the maintenance costs, any costs of coordinating subscriber complaints will more than adequately be recovered via its existing basic cable service rates.

Section 18.3.3(F)

Allegation: Apollo claims it will incur the burden and costs of assuring that customer equipment will not interfere or harm the network. Apollo Br., at 8.

Facts: Under the Maintenance Agreement, Apollo was responsible for maintaining acceptable performance levels on all system equipment. GTECA now performs that role; therefore, Apollo should not incur any costs or administrative burdens in monitoring subscriber equipment. However, neither Apollo, nor any other customer, has the right to interconnect equipment that is not compatible with GTECA's network facilities or that will interfere with, or impair, GTECA's provision of service. The requirements under Section 18.3.3 of the tariff do not place any additional conditions or restrictions on Apollo but are simply designed to protect the integrity of GTECA's network. Similar language appears in other sections of GTECA's tariff (*e.g.*, GTOC Tariff FCC No. 1, Section 2.2.2(A)).

Section 18.3.3(G)

Allegation: Apollo objects to providing GTECA with certain subscriber service information, such as new or disconnected subscribers and changes in service levels. Apollo Br., at 8, referencing Section 18.3.3(H). (The correct reference is actually Section 18.3.3(G).)

Facts: Because GTECA is now performing installation and maintenance on the network, GTECA must have access to accurate subscriber information in order to install or disconnect drops and to effectively perform maintenance. These requirements allow GTECA to maintain and protect the security of the network.

Section 18.3.3(G) states "The customer shall notify the Telephone Company of any changes in the profile of the households connected to the Telephone Company's video network either by agreed upon electronic access (*i.e.*, terminal screen) and/or written notification. Changes include but are not limited to the addition of new subscribers, deletion of existing subscribers, and changes to service levels." For example, a complaint from a subscriber that cannot receive a particular channel would require basic service level information to verify that the subscriber is authorized to receive that particular channel, so that GTECA can then isolate the trouble to determine if there is a problem in the coaxial network or the customer decoder. In addition, when a subscriber no longer wants service from one or both of the programmers (*i.e.*, Apollo or Service Corp.), GTECA must be notified so that it can verify that the proper channels in the decoder box have been disabled and, if necessary, the decoder is returned and the drop is disconnected.

<u>Section 18.4(A)</u>

<u>Allegation</u>: Apollo questions whether the tariff provides it a right to 275 MHz of bandwidth, irrespective of the number of channels. Apollo Br., at 8.

<u>Facts</u>: GTECA's tariff must reflect the characteristics of the underlying network as it exists today. Apollo currently uses 275 MHz of bandwidth via 39 separate channels and the tariff simply reflects this fact. Should additional equipment be installed, such as digital compression facilities, the tariff can be revised to reflect such capabilities.

Section 18.4(A)(3)

Allegation: Apollo infers that GTECA's tariff should contain contract provisions between Service Corp. and Apollo, and specifically excludes a purported noncompete agreement between Service Corp. and Apollo. Apollo Br., at 8-9.

Facts: Inclusion of specific Service Corp.-Apollo contract terms in GTECA's tariff is not appropriate. The tariff describes the terms and conditions under which GTECA will provide regulated video channel service to Apollo. GTECA is the regulated, issuing entity of the tariff, not Service Corp. Service Corp. is providing Apollo no regulated services. Apollo's claims respecting any agreements with Service Corp. are thus irrelevant to this investigation.

Section 18.4(A)(4)

Allegation: Apollo questions whether tariff modifications filed under Transmittal No. 893 conflict with the right of first refusal language contained in an amendment to the Lease Agreement. Apollo Br., at 8.

Facts: Revisions filed under Transmittal No. 893 re-characterized the Video Channel Service in Cerritos as being a generally available common carrier offering. However, specific conditions and rates were filed for the only two users of the system. The right of first refusal is specifically applicable to Apollo, as set forth in the tariff.[13]

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[13] Apollo also claims a right to use GTECA's fiber facilities. However, any fiber used by GTECA in Cerritos for test purposes has been converted to use for GTECA's local telephone exchange services and is not used for any commercial video programming. Apollo's right of first refusal with respect to GTECA's fiber facilities is only triggered if (1) the fiber facilities are made commercial available for video programming, and (2) these facilities are offered to a third party to commercially provide video programming. Lease Agreement, Amendment No. 2, ¶ 8 (modifying ¶ 21(b)). Neither condition has occurred. Therefore, Apollo has absolutely no right to the use of these facilities.

Section 18.4(A)(6)

Allegation: Apollo complains that it will now be charged for subscriber drop installations while it was previously reimbursed for installation activities under the Installation Agreement.

Facts: Termination of the Maintenance and Installation Agreements requires GTECA to assume all installation activities. The Installation Agreement that existed between GTECA and Apollo expired during September, 1993 and had been continued on a temporary basis upon consent of both parties. Both parties reserved the right to unilaterally terminate the agreement by giving proper notice. GTECA gave proper notice and terminated the Installation Agreement effective July 17, 1994 (by notice dated June 13, 1994, received by Apollo on June 15, 1994).

Under the tariff arrangement, GTECA will charge Apollo only one-half of the total costs of each new drop installation which should serve to reduce Apollo's current costs of acquiring new subscribers. The drop charges in the tariff are reasonable and in no way place an undue financial hardship on Apollo. Apollo claims that its cost to install a drop is approximately $60. *See* Apollo's June 29, 1994 correspondence to the Bureau. It is not clear, however, if this estimate reflects costs of reconnecting a drop that exists at a customer's location, installing a new drop, or an average of both types of installations.

GTECA's tariffed charge of $112.50 applies to new drops where GTECA is required to install an entirely new underground drop. Based upon 1993 data provided by Apollo, approximately 20% of all drop connections are new drops and 80% are reconnects. This computes to an average drop connection charge of $52.50, which is lower than Apollo's own estimated cost.

CONCLUSION.

Accordingly, Transmittal Nos. 873 and 893 are properly justified and lawful as supported by GTE's Direct Case and these Comments.

Respectfully submitted,

GTE Service Corporation, on behalf of its affiliated GTE Telephone Operating Companies and GTE California Incorporated

Ward W. Wueste, Jr., HQE03J43
John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6969

Andre J. Lachance

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5276

September 15, 1994

Their Attorneys

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 15th day of September, 1994 to all parties on the attached list.

Ann D. Berkowitz

Daniel L. Brenner
Attorney
National Cable Television Association
1724 Massachusetts Avenue, NW
Washington, DC 20036

William Kennard
General Counsel
Federal Communications Commission
1919 M Street, NW
Room 614
Washington, DC 20554

Randy R. Klaus
Senior Staff Member
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

David Nall
Federal Communications Commission
Common Carrier Bureau, Tariff Division
1919 M Street, N.W.
Room 518
Washington, DC 20554

John B. Richards
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, DC 20011

Jeffrey Sinsheimer
Director-Regulatory Affairs
California Cable Television Association
4341 Piedmont Avenue
Oakland, CA 94611

Edward P. Taptich
Attorney
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, DC 20005

Gregory J. Vogt
Chief
Tariff Division, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554